



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: SRC-00-062-52641

Office: Texas Service Center

Date: JAN 8 2001

IN RE: Petitioner:
Beneficiary:

Public Copy

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

Identities that cannot be
prevent clearly unwaranted
violation of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Mark C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, a martial arts institution, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its administrative manager. The director determined that the petitioner had not established that the beneficiary's duties were primarily those of an executive or manager.

On appeal, counsel submits a brief in rebuttal to the director's findings.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

8 C.F.R. 214.2(l)(14)(ii) states that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The United States petitioner was established in 1998 and states that it is a wholly-owned subsidiary of [REDACTED] located in [REDACTED] Brazil. The petitioner seeks to extend

the employment of the beneficiary for a three-year period at an annual salary of \$27,000.

At issue in this proceeding is whether the beneficiary will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

"Managerial capacity" means an assignment within an organization in which the employee primarily-

i. manages the organization, or a department, subdivision, function, or component of the organization;

ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

"Executive capacity" means an assignment within an organization in which the employee primarily-

i. directs the management of the organization or a major component or function of the organization;

- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision-making; and
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In his decision, the director noted that the beneficiary as the head martial arts instructor performs much of the U.S. entity's business activity and does not supervise professional employees.

On appeal, counsel states in part that:

[The beneficiary's] services are still needed in the U.S. In the position of Administrative Manager, he will continue to be responsible for managing the financial and administrative systems necessary for the efficient operation of the company. He will continue to manage the financial operations of the company by performing budget analysis, preparing our monthly and annual budgets, ensuring company expenditure does not exceed budget limits, preparing financial and cost analyses, determining the efficient use of funds, performing cost accounting functions, reviewing financial statements to determine the company's progress, devising and implementing accounting procedures and methods and hiring and training staff. [The beneficiary] will also continue to ensure company compliance with all government regulations. In addition, he will continue to establish major economic objectives and policies for the company. The latter activities involve 65% of his time. [The beneficiary] directs the business administration activities for [REDACTED] and in this regard, provides guidance and direction to subordinate professional staff. Specifically, [the beneficiary] has trained the General Manager, Director of Sales and Marketing, whose job functions are to assist [the beneficiary] with the day-to-day operations of the company, as well as advertising and marketing the company's product. This occupies 25% of his time. As a senior manager, [the beneficiary] has the highest authority to recommend personnel actions. Finally, [the beneficiary] sets teaching methods and coordinates and trains instructors. This occupies 10% of his time.

The record indicates that the U.S. entity was incorporated on March 23, 1998, and the beneficiary was granted L-1A status from February

16, 1999 through February 16, 2000. The present petition for an extension was filed on December 27, 1999. Information in the record indicates that the U.S. entity has the following three employees: the beneficiary as the administrative manager; a general manager, director of sales and marketing; and a person to do janitorial and maintenance. The document entitled "Organizational Structure" describes the beneficiary in part as the "head instructor." The document entitled "Organizational Overview" indicates in part that the beneficiary is "running the day to day operations of the Academy in Atlanta and is providing the leadership and vision to bring [REDACTED] to the rest of the world." The document describes the duties of the beneficiary's subordinate employee, the general manager/director of sales and marketing, in part as follows: "assisting [the beneficiary] with the day to day operations of the Academy [in] Atlanta as well as advertising and marketing the academy to potential new students." Despite counsel's argument that the beneficiary spends the majority of his time as an administrative manager, the fact remains that he is the U.S. entity's head instructor for teaching jiu-jitsu. In fact, the "organizational overview" document indicates that the beneficiary's subordinate employee, the general manager/director of sales and marketing, instructs boxing and kick boxing. Nowhere does it indicate that the general manager instructs jiu-jitsu or that he is qualified to do so.

Counsel cites an unpublished AAU decision, which has no precedential effect in this proceeding. See 8 C.F.R. 103.3(c). Counsel argues that, like the beneficiary in the cited decision, the beneficiary manages and oversees the functions of the company, partly through a subordinate professional employee. The petitioner's 1999 corporate tax return reflects the following: \$114,874 in gross receipts or sales; \$12,000 in compensation of officers; and \$2,848 in salaries and wages. The minimal amount of monies paid in compensation of officers and in salaries and wages does not persuasively demonstrate that the beneficiary manages and oversees, rather than performs, the functions of the U.S. entity. Furthermore, the record contains no evidence of the U.S. entity's employees such as W-2 forms or quarterly tax returns. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings.

Upon review of the record, the petitioner has not sufficiently established that the beneficiary will function at a senior level within an organizational hierarchy other than in position title. There is no comprehensive description of the beneficiary's duties that persuasively demonstrates that the beneficiary will be performing in a primarily managerial or executive capacity. There is no evidence to establish that the petitioner employs a subordinate staff of professional, managerial, or supervisory

personnel who will relieve the beneficiary from performing nonqualifying duties. The record contains no comprehensive description of the beneficiary's duties that demonstrates that the beneficiary will be managing or directing the management of a department, subdivision, function, or component of the petitioning organization. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.